

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES OF AMERICA	*	4:18-CR-457-1
	*	
V.	*	2:03 p.m. to 2:31 p.m.
	*	
JAMES ROBERT TUMLINSON	*	MARCH 11, 2019

**HEARING ON MOTIONS  
BEFORE THE HONORABLE KEITH P. ELLISON  
Volume 1 of 1 Volume**

## **APPEARANCES**

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#### **ALSO IN ATTENDANCE:**

18 | Mr. James Robert Tumlinson

19 Court Reporter:  
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22 Proceedings recorded by mechanical stenography.  
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1 PROCEEDINGS

2 THE COURT: We'll turn to United States v. James  
3 Robert Tumlinson. We will take appearances of counsel,  
4 beginning with the government.

02:03:24 5 MS. ZACK: Sherri Zack on behalf of the United  
6 States, Your Honor. Good afternoon.

7 MR. ETHERIDGE: Chad Etheridge on behalf of the  
8 defendant.

9 THE COURT: Thank you.

02:03:37 10 Good afternoon, sir.

11 | THE DEFENDANT: Good afternoon.

12 THE COURT: Mr. Tumlinson, you do not need  
13 interpretation, do you?

14 THE DEFENDANT: No, sir.

02:03:45 15 THE COURT: Okay. I thought we would hear the  
16 evidence first before we do anything else. No?

17 MS. ZACK: Whatever works for Your Honor, if  
18 there is any specific area, if Your Honor wants to narrow  
19 anything down, if you have any specific -- if there is any  
20 portion of it at this point that you want to dispense with  
21 or something you are focusing on.

22 THE COURT: Well, let's talk about that.

23 Mr. Etheridge, can we refine the issue a bit here? Do you  
24 want to talk about one of the -- one of the warrants, but  
02:04:15 25 not all of them?

1 MR. ETHERIDGE: Your Honor --

2 THE COURT: (addressing defendant) Sir, you can  
3 sit down for now. You may sit down.

4 MR. ETHERIDGE: The two state warrants, Your  
02:04:24 Honor, give the Court a global historical reference of  
5 what the substantive issues of when the case began --  
6

7 THE COURT: Why don't you come forward. I'm  
8 having a little trouble hearing you.

9 MR. ETHERIDGE: Yes, Your Honor. Your Honor, I  
02:04:45 think it's important, even though this is a federal case,  
10 that the case began as a state --  
11

12 THE COURT: I understand that.

13 MR. ETHERIDGE: Yes, Your Honor. What we're  
14 arguing is that some of the facts that were put in the  
02:04:56 probable cause affidavit to -- that were submitted to the  
15 federal magistrate were erroneous or inaccurate. And  
16 that's what we are arguing.  
17

18 THE COURT: That's what you want to focus on is  
19 the inaccuracies?

02:05:12 20 MR. ETHERIDGE: Yes, Your Honor.

21 THE COURT: And whether the good-faith exception  
22 applies?

23 MR. ETHERIDGE: Yes, Your Honor.

24 MS. ZACK: Okay. And as far as I can tell, from  
02:05:19 25 the reading of defense counsel's motion, the only

1       inaccuracy is that the officer that applied for the  
2       federal search warrant put in there that there was a March  
3       13th state warrant, which there was, and did not discuss  
4       the one on February 28th.

02:05:46     5       So it's not -- the information itself is not  
6       inaccurate. It just doesn't say it was two state search  
7       warrants. It says there was one. And either way, that  
8       one state warrant, the one on March 13th, was what covered  
9       the items taken to the RCFL by the state agents. And then  
02:06:08     10      all of those -- that, the residential search and the state  
11      search, is what led to the federal search.

12           So when Mr. Etheridge discusses inaccuracies, the only  
13       inaccuracy is the fact that it doesn't say that there were  
14       two state warrants. It just says one. But it covers all  
02:06:30     15      the same information. I don't know what other  
16      inaccuracies --

17           THE COURT: There are?

18           MS. ZACK: -- there are factually. I mean, a  
19       warrant -- all a warrant has to do is lay out probable  
02:06:44     20      cause for the magistrate. It does not have to include  
21       every single fact and circumstance known to law  
22       enforcement at the time that the warrant is applied for.  
23       It just has to have enough to establish probable cause.

24           And I know Your Honor is totally aware of that. If  
02:07:00     25      the agents put in everything they knew every time they did

1 a warrant, the magistrates would never have five minutes.  
2 I mean, all they would be doing is reading 50-page  
3 warrants.

4 THE COURT: Okay. Do you want to respond?

02:07:12 5 MR. ETHERIDGE: Your Honor, that is true. But we  
6 believe that the sheriff's office misled the federal law  
7 enforcement agency from the point of view if the federal  
8 officer had access to the underlying warrant and the  
9 affidavit, a lot of questions would arise at that point.  
02:07:32 10 Some of it is -- again, the underlying warrant that  
11 actually seized the items were based on a continuous  
12 sexual abuse. And the warrants in which we're fighting  
13 over on the state side is -- there is not enough probable  
14 cause to connect the two.

02:07:49 15 And that being said, if the federal officer is  
16 conducting an investigation or talking to the sheriff's  
17 office, he would have learned that the items were already  
18 viewed. That's why at that point they realized they  
19 needed to get a second warrant. So those --

02:08:05 20 THE COURT: This is an important point. I'm not  
21 sure I'm following you. They had -- they were aware of  
22 the conduct that was alleged. They went and got a warrant  
23 based on that, right?

24 MR. ETHERIDGE: Yes, Your Honor.

02:08:17 25 MS. ZACK: That's the February 28th warrant for

1 the residence.

2 THE COURT: Nothing inaccurate about that, right?

3 MR. ETHERIDGE: We're fighting the probable cause  
4 in regards to the electronical part of it, Your Honor.

02:08:27 5 The underlying case is a continuous sexual abuse. The  
6 magistrate signed what we would consider a broad warrant,  
7 and we have already had an informal hearing with the state  
8 judge. He has indicated he is going to suppress all the  
9 electronical stuff on the state side.

02:08:42 10 At that point the items were seized, the sheriff's  
11 office looked at the electronical stuff, the data,  
12 realized we need a second warrant, based on *U.S. v. Riley*;  
13 and that's what I argued on the state side. And at that  
14 point, the -- the sheriff's office created offense reports  
02:09:05 15 talking about what they did between the first warrant and  
16 the second warrant.

17 But when you look at the affidavit to get the second  
18 warrant, they regurgitated the same facts. So, i.e.,  
19 that's kind of where we are at right now. If the federal  
02:09:19 20 officer knew about the first warrant, he would've looked  
21 at it and compared it to the second warrant and then  
22 realized that something is not right, at least go back to  
23 the sheriff's office and say, hey, we need further  
24 investigation or do his own investigation.

02:09:31 25 So I think the sheriff's office misled the federal

1       officer in just only telling them about the second  
2 warrant.

3           THE COURT: Did -- the misleading was not  
4 mentioning the first warrant?

02:09:44   5           MR. ETHERIDGE: Yes, Your Honor. Or the  
6 subsequent actions by the sheriff's department because  
7 that's where -- it's our contention or the defense's  
8 contention -- the fruit of the poisonous tree issue comes  
9 in when the sheriff's office looked at the items without a  
02:10:01   10 second warrant.

11           MS. ZACK: Your Honor, maybe I can clarify this.  
12 There was a child that made an outcry.

13           THE COURT: Yeah.

14           MS. ZACK: Based on that outcry, there was a  
02:10:14   15 warrant issued for the defendant's residence.

16           THE COURT: Right.

17           MS. ZACK: That warrant specifically asked for  
18 electronic devices, believing that evidence of the  
19 molestation could be found on those devices as well as in  
02:10:31   20 the home itself. And there does not have to be an  
21 allegation of child pornography to look for digital  
22 evidence of the molestation, which does qualify as child  
23 pornography.

24           The fact is that that magistrate reviewed it and  
02:10:54   25 believed, based on those facts and circumstances, whether

1 it was going to be child pornography or even the defendant  
2 talking with the third party that viewed the molestation  
3 about bringing the kids, being in the car, whatever it may  
4 be, that magistrate believed and had a practical  
02:11:16 5 application of the facts to the idea that in this day and  
6 age, shocking, there could be things on a cell phone, a  
7 computer, a USB drive.

8 This is the way people live their lives today. No one  
9 lives outside of their electronic devices, I mean, unless  
02:11:36 10 you are the type of person that lives completely off the  
11 grid. Everyone is completely attached, even if it's just  
12 to a cell phone.

13 MR. ETHERIDGE: Your Honor.

14 MS. ZACK: And the magistrate that reviewed the  
02:11:48 15 residential warrant said you can take these devices.  
16 After those devices -- and search them. After those  
17 devices were taken, the sheriff's department did a  
18 preview. They saw some child pornography. They issued  
19 arrest warrants for the defendant for the molestation,  
02:12:10 20 which I believe is continuous sexual assault of a child on  
21 the state level, and some child pornography charges. They  
22 had not reviewed everything yet. That's why they took  
23 everything to the RCFL, the FBI lab, after they got a  
24 second state search warrant.

02:12:28 25 At this point, the federal government had not been

1 called. The federal agent was not involved at all. The  
2 only federal nexus at that point was that San Jacinto  
3 County asked for the FBI lab to process electronic devices  
4 based on their second warrant, March 13th.

02:12:51 5 I would agree with defense counsel that the March 13th  
6 warrant does not mention whether the San Jacinto Sheriff's  
7 Office previewed those items, but the federal agent had  
8 nothing to do with that. They had not been called --  
9 nothing -- there had been no review of anything by any  
02:13:15 10 federal agency.

11 We're not saying that we believe the March 13th  
12 warrant issued by San Jacinto County is deficient. I  
13 don't believe it is deficient. It said we would like to  
14 now look for evidence of promotion of child pornography or  
02:13:32 15 whatever they call production at the state level; and the  
16 Judge, based on those same facts and circumstances,  
17 granted them the additional permission, which I don't even  
18 believe after reading the first warrant was necessary, for  
19 them to now look for that.

02:13:48 20 So then with that permission they take everything over  
21 to the RCFL. And on March 19th, it's all submitted to the  
22 FBI's lab for review. At this point, no federal officer  
23 has been called to investigate this case.

24 CFE, computer forensic examiner, Russell Ackley starts  
02:14:14 25 processing this stuff. He sees two different things. He

1 sees what we will call regular child pornography, meaning  
2 the types of images --

3 THE COURT: That circulates.

4 MS. ZACK: Yeah. The stuff that's been in  
02:14:24 5 circulation.

6 THE COURT: Yeah.

7 MS. ZACK: And then he sees what he believes to  
8 be homemade child pornography produced --

9 THE COURT: Of the children who were the victims  
02:14:34 10 of the --

11 MS. ZACK: Correct. But he doesn't know who or  
12 what. He just knows this is different. This is not that.  
13 And he calls San Jacinto County.

14 They contact Special Agent Robert Guerra, and he and  
02:14:49 15 Russell Ackley, the CFE, talk about I have seen some  
16 regular child pornography and what I believe is produced.  
17 Russell Ackley describes those images to Special Agent  
18 Guerra, who is meeting with the San Jacinto County people.  
19 He goes over all of that, and he applies to Judge Stacy  
02:15:14 20 for a federal search warrant.

21 He was not involved -- he being Robert Guerra -- was  
22 not involved in any of the investigation of the  
23 molestation. He only became involved after March 19th,  
24 after the first two state warrants were issued.

02:15:38 25 And based on the information he was provided from CFE

1 Ackley and then talking with San Jacinto County, he  
2 applies for the federal search warrant. And he did not  
3 sit down and review the state search warrants. And it  
4 seems like from defense counsel's argument that somehow  
5 there is some burden on the federal agent to review state  
6 search warrants and make some type of probable cause  
7 determination.

8 He was told we had two search warrants. This is what  
9 we found. We think you have a federal case. And he  
02:16:01 10 applied, based on the information that was given to him,  
11 for a federal search warrant.

12 So even if Mr. Etheridge is correct and he was somehow  
13 misled about something, he acted in good faith.

14 THE COURT: Yeah. Okay. Let's go back to Mr. --  
02:16:34 15 I think I understand your position.

16 Mr. Etheridge.

17 MR. ETHERIDGE: Your Honor, there are -- there is  
18 a good-faith exception, but then there are times when the  
19 good-faith exception cannot be relied on.

02:16:46 20 And some of that is, in *U.S. v. Leon*, an exception is  
21 not available to an officer who relies on a warrant based  
22 on an affidavit so lacking probable cause as to render  
23 belief in its existence entirely unreasonable.

24 And that -- and that's why it's important that the  
02:17:01 25 federal officer is going to look at the search warrant to

1 sometimes go to the underlying agency --

2 (Clock chiming.)

3 THE COURT: Let me get this off. Just a second.

4 Due to the change in time -- okay. Go ahead.

02:17:22 5 MR. ETHERIDGE: So -- and that's why I think it's  
6 important. I'm not asking for the federal agent to make a  
7 determination whether there is probable cause or not; but  
8 if he is going to take over the investigation, as the  
9 state is saying which happened around April, at some point  
02:17:34 10 he has to do due diligence to go and talk to the  
11 underlying agencies.

12 THE COURT: Okay.

13 MS. ZACK: He didn't take --

14 THE COURT: Just a second. Just a second. What  
02:17:41 15 you are arguing, it seems to me, is not evidentiary. It's  
16 just an issue of law. So I'm not sure we need  
17 presentation of evidence.

18 MR. ETHERIDGE: I agree with that, Your Honor.

19 THE COURT: Well, you should have let me know  
02:17:53 20 that. I thought we were going to have an evidentiary  
21 hearing today.

22 MS. ZACK: Well, I was prepared for that, Your  
23 Honor, but I did not necessarily believe that is the case.  
24 But if Your Honor had any questions, that's why I asked if  
02:18:03 25 there were any specific issues.

1       As to this taking over the investigation, the federal  
2 agent didn't take over any investigation. San Jacinto  
3 County is still handling the continuous sexual abuse of a  
4 child charge and all of that. That is their case. He is  
02:18:26 5 charged in that county with a whole bunch of stuff.

6             THE COURT: Okay. That's their proceeding.

7             MS. ZACK: So the idea that somehow this agent is  
8 supposed to review everything they have done, what the  
9 agent knew and what is uncontested is that two warrants  
02:18:47 10 were issued. Those warrants were executed. And when he  
11 got the case and he saw and had described to him three  
12 regular images of child pornography and two images of the  
13 children at question in this case, he then did what he is  
14 supposed to do and applied for a federal search warrant.

02:19:10 15 There is no --

16             THE COURT: I understand that.

17             MS. ZACK: -- bad faith, and I don't believe  
18 there was any bad faith on the part of the San Jacinto  
19 people.

02:19:20 20 Defense counsel suggests that because they got arrest  
21 warrants before the second search warrants that something  
22 nefarious happened. An arrest warrant is a probable cause  
23 determination. We arrest people all the time on criminal  
24 complaints in the federal system --

02:19:35 25             THE COURT: I understand that.

1 MS. ZACK: -- and have 30 days to indict them.  
2 And we may not have fleshed out enough of it at the time  
3 of the arrest. We just know we need to make the arrest  
4 then.

02:19:44 5 THE COURT: I know that. I understand.

6 MS. ZACK: So I'm not sure where this act is or  
7 action is that excludes this Court from applying the  
8 good-faith exception to the warrant rule. And I have  
9 tried to figure that out, based on counsel's filing.

02:20:02 10 THE COURT: Why do we even get to the good-faith  
11 basis? Just because there is that one error in terms of  
12 the date?

13 MS. ZACK: Well, I don't think we do need to get  
14 there. I think that that error does not negate the  
02:20:14 15 probable cause.

16 THE COURT: No. I don't think so either. I  
17 don't think it negates the entire affidavit.

18 MS. ZACK: Right. So, no. As Your Honor read in  
19 our motion, we believe there was probable cause for the  
02:20:22 20 warrant, and we put that part first.

21 Then we said even if there was misinformation or  
22 something wrong, Special Agent Guerra acted in good faith,  
23 and the people that reviewed this on the federal level  
24 were acting in a good-faith reliance on a detailed warrant  
02:20:39 25 submitted and signed off on by a magistrate.

1           THE COURT: I think I understand your position.

2           Mr. Etheridge, do you want to call any witnesses?

3           MR. ETHERIDGE: No, Your Honor.

4           THE COURT: I'm really struggling to see what was  
02:20:50       5 deficient about the federal warrant. It seems to me the  
6           federal warrant probably could have issued from the time  
7           they found the children who told their story. I think  
8           without anything else the federal warrant could have  
9           issued. So it's hard to see that in the interim, with  
02:21:08       10 more evidence having been accumulated, that that somehow  
11           voided the initial probable cause.

12           The circumstance, generally, is tragic with multiple  
13           victims, victims we know the identities of, and many of  
14           whom's identity we'll never know. It's a tragic case.  
02:21:33       15 These are my least favorite kinds of criminal proceedings,  
16           but I don't think there was a procedural defect in what  
17           the federal government did.

18           I mean, wouldn't you have signed a warrant given this  
19           information in front of you?

02:21:50       20           MR. ETHERIDGE: Your Honor, I think we have to  
21           separate the continuous and I disagree with the state's  
22           argument that continuous sexual abuse equates to child  
23           pornography. There are two different sets of elements.

24           And I'm not saying it can't happen; but as I argued in  
02:22:05       25 the state court, there has to be a nexus between what the

1 warrant is asking for here, i.e., there is a lot of items  
2 on the state side that are good, like panties, anything  
3 that would be relatable to a sexual assault.

4 And then, where we argued that once it got to the  
02:22:25 5 electronical equipment, there was nothing in the  
6 affidavit, no nexus to connect those facts to that charge.  
7 And originally there was nothing to be said about any  
8 possession or any videos.

9 It wasn't until the sheriff's office reviewed it that  
02:22:39 10 a second warrant that became, I believe, under *U.S. v.*  
11 *Riley*, the right to review electronical data that they  
12 realized, oh, okay, we have more here. At that point, I  
13 think that's where the taint began. And that's why our  
14 position is that I believe San Jacinto never told --

02:22:56 15 THE COURT: You don't think the fact that there  
16 were these actions taken by Mr. Tumlinson allegedly toward  
17 his young family members would have been sufficient to  
18 search his premises for digital information about child  
19 pornography? I would have thought that by itself would be  
02:23:23 20 enough.

21 MR. ETHERIDGE: No, Your Honor. Based on -- it  
22 could be, but not in this particular case.

23 THE COURT: I know there is no guarantee you'll  
24 find child pornography when you find a child molester, but  
02:23:36 25 it satisfies probable cause, doesn't it?

1                   MR. ETHERIDGE: Well, I would say 99 percent of  
2 the time it could. But again, in this case -- and that's  
3 why I think the state neglected -- not the federal but the  
4 sheriff's department never told the FBI agent because when  
02:23:51 5 you are looking at the affidavit, it was a very deficient  
6 affidavit.

7                   Was it enough for probable cause for items such as  
8 panties and linens? Yes. I didn't ask the state court to  
9 suppress any of those items.

02:24:04 10                  But there was nothing in the affidavit where the kid  
11 said, hey, he made me watch this or he recorded me. There  
12 was no nexus.

13                  Because if that's the case, then what would happen is  
14 any time a warrant is issued then we could always stretch  
02:24:19 15 it to another crime. It wasn't until later on that the --  
16 when the sheriff's office reviewed it and was like, oh, we  
17 have more here.

18                  And at that point, I think they realized we messed up  
19 because we looked at it without a second warrant. And  
02:24:33 20 I'll explain to you why, Your Honor. If the sheriff's  
21 department truly believed they had a right to review the  
22 contents, they would have put the language in the second  
23 warrant talking about we have seen all these videos. But  
24 they did not. And that would be a slam dunk.

02:24:50 25                  If you look at the second warrant, they never -- the

1 affidavit never discusses about any child pornography,  
2 reviewing it, we have had a right to review it, this is  
3 what we found, and we need a second warrant. They just  
4 regurgitated the same facts from the first warrant into  
5 the second warrant and just put a different charge.  
02:25:06

6 And that's why the state court has indicated he was  
7 going to suppress it because there was no nexus. Even  
8 if -- and the state judge said, Even if there was just one  
9 sentence that says he made us watch something bad, he  
02:25:21 10 said, I would deny your motion. But there is nothing  
11 there.

12 I think that's why when Special Agent Guerra got  
13 involved -- and we can sit here and dispute whether we  
14 think the sheriff's office misled him intentionally, but  
02:25:37 15 that's what I think happened here. I think they realized  
16 we messed up or at least on this part of the case and has  
17 nothing to do with the sexual assault part. I mean, they  
18 are good to go. They have got beaucoup of evidence on  
19 that side. They are going to try that part of the case.

02:25:51 20 But when it comes down to these electronic thumb  
21 drives and computers and such, it was both warrants were  
22 very deficient.

23 THE COURT: And they were deficient why?  
24 MR. ETHERIDGE: Because there was no nexus.  
02:26:04 25 There was no --

1           THE COURT: A nexus between the conduct and the  
2 images?

3           MR. ETHERIDGE: Yes, Your Honor.

4           MS. ZACK: May I respond to that, Your Honor?

02:26:10   5           THE COURT: Yes.

6           MS. ZACK: Two things. Looking at *Illinois v.*  
7 *Gates*, when a magistrate makes a decision, there has to be  
8 a practical, common-sense decision, given all the  
9 circumstances set forth in the affidavit before him or  
02:26:31   10 her, including the veracity and basis of knowledge of the  
11 person supplying the information and that there is a fair  
12 probability that contraband or evidence of a crime will be  
13 found in a particular place.

14           We know that standard. It's an objective one, and it  
02:26:47   15 renders the officer's subjective motivation irrelevant.

16           So even if Your Honor believed that San Jacinto County  
17 somehow had some kind of misguided effort or did something  
18 wrong in their second warrant, then it wouldn't matter  
19 because it's an objective standard.

02:27:10   20           And under the Fifth Circuit cases, *U.S. v. Flanders*,  
21 which cites *U.S. v. Froman* -- and *Flanders* is at 468 F.3d  
22 269.

23           THE COURT: Spell Froman.

24           MS. ZACK: Well, *Flanders* is F-l-a-n-d-e-r-s.  
02:27:29   25 *Froman* is F-r-o-m-a-n. And that's at 355 F.3d 882, and

1 that's from 2004.

2 An affidavit supporting a search warrant for child  
3 pornography does not need to show specific individualized  
4 information that a defendant possesses child pornography.

02:27:48 5 The case law says that there was nothing wrong with  
6 those warrants, the state warrants or the federal warrant,  
7 under Fifth Circuit and US Supreme Court law.

8 So I certainly sympathize with the defendant's  
9 position. I mean, he has got to do the best he can for  
02:28:06 10 his client. But according to the case law, you don't have  
11 to know that you are going to find child pornography. You  
12 can reasonably assume that if this individual is molesting  
13 children, they have a sexual interest in children, and  
14 there is a probability -- because that's all there has to  
02:28:26 15 be, that child pornography will be found. And that was  
16 the case here. And it was found. And now we're here,  
17 Your Honor.

18 MR. ETHERIDGE: And, Your Honor, to rebut that,  
19 in *U.S. v. Woerner*, W-o-e-r-n-e-r, 709 F.3d 527, which is  
02:28:48 20 a Fifth Circuit 2013, Your Honor, they have indicated four  
21 situations in which a good faith --

22 THE COURT: Slow down a little bit. They have  
23 indicated what now?

24 MR. ETHERIDGE: Your Honor, under the *Woerner*  
02:29:00 25 case, Your Honor, the Court has identified four situations

1 where the good-faith exception does not apply.

2 One, when the issuing magistrate was misled by  
3 information in an affidavit that they filed knew or  
4 reasonably should have known was false. I believe that  
5 might be applicable to this case.  
02:29:15

6 THE COURT: Well, hold on. We don't have any  
7 evidence he knew that to be false.  
02:29:24

8 MR. ETHERIDGE: Well, I guess not that he did  
9 know it to be false; but if he actually had read the  
10 second warrant, the one he listed, it clearly states it  
11 was a second warrant, which in the affidavit --  
12

12 THE COURT: But how does that -- how does that  
13 intrude on any of the Fourth Amendment protections that we  
14 strive to protect? How is that offensive to the values of  
15 the Fourth Amendment?  
02:29:42

16 MR. ETHERIDGE: Well, Your Honor, because I think  
17 at that point Special Agent Guerra, if given a second  
18 warrant and was told it was a first, then he would -- I  
19 would guess during his investigation, he would call the  
20 sheriff's office and say, hey, what do we have going on  
21 here? What is the situation? And then at some point  
22 realize there might be more going on.  
02:29:55

23 And here, what I'm asking the Court to do is punish  
24 the sheriff's office for what I believe is a violation of  
25 my client's Fourth Amendment rights. And not so much that  
02:30:09

1 I believe that the federal officer did anything wrong,  
2 besides just maybe not reading the warrant and asking --  
3 doing due diligence, but there are -- under *Woerner* the  
4 Court's decision is there are factors where we can  
02:30:30 5 overcome the good-faith exception. And here I think it  
6 meets that. I think at some point the sheriff's office  
7 realized they messed up.

8 THE COURT: Anything else from anybody?

9 MS. ZACK: No, Your Honor.

02:30:44 10 MR. ETHERIDGE: No, Your Honor.

11 THE COURT: I'm afraid I'm going to have to deny  
12 your motion. You certainly gave it the very best effort  
13 you could, and you made the best arguments anybody could  
14 have on behalf of your client. It is overruled.

02:30:53 15 MS. ZACK: Your Honor, could we possibly handle  
16 the pretrial conference today rather than coming back on  
17 Thursday? Because I think in light of Your Honor's  
18 ruling, defense counsel is going to have to get with his  
19 client and we may be able to work this out without a trial  
02:31:12 20 but we're going to need some time to do that.

21 THE COURT: What would we cover in a pretrial  
22 conference?

23 MS. ZACK: Nothing. But we're set for Thursday  
24 for a pretrial conference.

02:31:24 25 THE COURT: We can cancel that.

1 MS. ZACK: Okay. That would be great. That way  
2 we all don't have to come back and bother Your Honor and  
3 then --

4 THE MARSHAL: All rise.

02:31:30 5 THE COURT: Go ahead. Is there something else,  
6 Ms. Zack?

7 MS. ZACK: No. No. We're good. Thank you so  
8 much, Your Honor.

9 (Proceedings concluded at 2:31 p.m.)

10 Date: March 18, 2019

11 **COURT REPORTER'S CERTIFICATE**

12 I, Laura Wells, certify that the foregoing is a  
13 correct transcript from the record of proceedings in the  
14 above-entitled matter.

15

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\_\_\_\_\_*/s/ Laura Wells*\_\_\_\_\_

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Laura Wells, CRR, RMR

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